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ADMIRALTY.

1. Clauses in a charter-party of a vessel construed. *Compania Bilbaina* v. *Spanish-American Light Co.* 483.
2. The owner of the vessel held not to be entitled to recover from the charterer any part of the expense of fitting up the tanks in the vessel to carry petroleum in bulk. *Ib.*
3. The owner could not affirm the charter-party for one purpose and repudiate it for another. *Ib.*
4. The charter-party never became a binding contract. *Ib.*
5. If there was any part of it in regard to which the minds of the parties did not meet, the entire instrument was a nullity, as to all its clauses. *Ib.*
6. Nor did the delivery of the vessel to the charterer, and her acceptance by him, constitute a hiring of her under the charter-party, as it would stand with certain disputed clauses omitted. *Ib.*
7. The delivery of the vessel was the adoption by the owner of the existing charter-party. *Ib.*
8. The owner could not collect rent for the time he was fitting up the tanks, and the charterer was liable to pay rent for the use of the vessel only while she was in his service. *Ib.*

ALABAMA CLAIMS.

One T., of Boston, went into insolvency in Massachusetts, in June, 1883, and a deed of assignment was made to his assignee in July, 1883. In June, 1863, T. was on board an American vessel, which was captured and burned by the Georgia, a tender of the Confederate cruiser Alabama, and thereby lost his personal effects and sustained other losses. Under the act of Congress of June 5, 1882, c. 195 (22 Stat. 98), T., in January, 1883, filed a claim, in the Court of Commissioners of Alabama Claims, claiming compensation for his losses, and the court gave a judgment in his favor. In February, 1885, a draft for the amount was issued by the treasury, payable to the order of T. and was sent to, and received at Boston. T. died at Boston four days later, intestate. In March, 1885, T.'s widow was appointed his administratrix by the Probate Court of the District of Columbia. In April, 1885, she gave a power of attorney to one B. to endorse the draft. He did so and collected the amount, which he retained. The assignee in insolvency sued

B. in a state court of Massachusetts, to recover the amount and had judgment. On a writ of error from this court, *Held*, (1) The decision and award of the Court of Commissioners of Alabama Claims was conclusive as to the amount to be paid on the claim, but not as to the party entitled to receive it; and the claim was property which passed to the assignee in insolvency, under the assignment to him, although it was made prior to the decision of the Court of Commissioners; (2) The claim and its proceeds were assets within the jurisdiction of Massachusetts; (3) B. was liable to the assignee in insolvency; (4) § 3477 of the Revised Statutes did not apply to the assignment in insolvency; (5) The insolvency law of Massachusetts was not unconstitutional; (6) It was not necessary, after the repeal of the bankruptcy act of 1867, that the insolvency statute of Massachusetts should have been reënacted in order to become operative. *Butler* v. *Goreley*, 303.

APPEAL.

1. The appeal to this court was prosecuted as against the firm, but a motion was granted to cure that defect by amendment. *United States* v. *Schoverling*, 76.
2. Where a decree in equity is a joint one against all the defendants, all the parties defendant must join in the appeal from it. *Hardee* v. *Wilson*, 179.
3. There is nothing in the facts in this case to take it out of the operation of that general rule. *Ib.*

APPRAISERS.

See CUSTOMS DUTIES, 3.

ATLANTIC AND PACIFIC RAILROAD.

See PUBLIC LAND, 5, 6, 7, 8.

BAILMENT.

L. desiring to purchase cattle from P., a bank paid the purchase money for L. to P., and P. delivered the cattle to the bank, and they were shipped by rail to M., in six cars, to sell, accompanied by P. and L. and one G. A bill of lading for four of the cars was issued in the name of L. A bill of lading was to be issued for the other two cars in the name of G., as a pass could be issued to only two persons on one bill of lading. G. had no interest in the cattle. The cattle in the six cars were delivered to M. A draft was drawn by L. against the shipment on M., and endorsed and delivered by L. to the bank, with the bill of lading for the four cars. The draft and bill of lading were presented to M., but the draft was not accepted or paid. Three hours afterwards M. sold the cattle but kept the proceeds because he claimed that L. was indebted to him on an old account. *Held*, (1) That the bank was entitled to recover the proceeds from M; (2) That the bank had a lien upon, and a pledge of, all the

cattle; (3) That the transfer of the bill of lading was a transfer of the ownership of the cattle covered by it; (4) That there was a verbal mortgage or pledge to the bank of the two car loads, and G. represented P., and through him the bank; (5) That it was proper for the trial court, as a question of law, to direct a verdict for the bank. *Means* v. *Bank of Randall*, 620.

See NATIONAL BANK, 1, 2.

BANKRUPT.

1. A bankrupt who purchases from his assignee in bankruptcy real estate to which he himself held the legal title at the time of the assignment is not thereby discharged from an obligation to account to a third party for an interest in the land as defined in a declaration of trust by the bankrupt, made before the bankruptcy, but takes title subject to that claim. *Roby* v. *Colehour*, 153.
2. Whether such relations existed between the bankrupt and such third party as prevented him from acquiring such absolute title, discharged from all obligations growing out of the declaration of trust, is not a Federal question. *Ib.*

See ALABAMA CLAIMS;
JURISDICTION, B, 7.

CAR TRUST.

See CORPORATION, 3;
JUDGMENT, 1.

CASES AFFIRMED OR APPROVED.

United States v. *Dalles Military Road Co.*, 140 U. S. 599, affirmed. *San Pedro & Cañon del Agua Co.* v. *United States*, 120.

Perry v. *Bailey*, 12 Kansas, 539, approved and followed. *Clyde Mattox* v. *United States*, 140.

Woodward v. *Leavitt*, 107 Mass. 453, approved and followed. *Ib.*

Ker v. *Illinois*, 119 U. S. 436, and *Mahon* v. *Justice*, 127 U. S. 700, affirmed. *Cook* v. *Hart*, 183.

Ex parte Royall, 117 U. S. 241, and *Ex parte Fonda*, 117 U. S. 516, adhered to. *Ib.*

See CONFISCATION, 2;
CUSTOMS DUTIES, 9;
JURISDICTION, B, 6.
WRIT OF PROHIBITION.

CASES DISTINGUISHED.

See PATENT FOR INVENTION, 1 (5).

CASES EXPLAINED, QUALIFIED OR OVERRULED.

Wales v. *Whitney*, 114 U. S. 564, qualified and explained. *Cross* v. *Burke*, 82.

See CONSTITUTIONAL LAW, 11.

CERTIORARI.

In each of these cases defendant in error sued plaintiff in error under the Interstate Commerce act, to recover alleged overcharges on the transportation of corn and recovered judgment, to each of which judgments the defendant below sued out a writ of error to the Circuit Court of Appeals. The cases being heard there the judgment in each was reversed, upon the ground that the jury should have been instructed to find a verdict for the defendant, and the cases were remanded for further proceedings in accordance therewith. On petitions for writs of *certiorari* to the Court of Appeals to bring up the records and proceedings, *held*, that the petitions should be denied. *Chicago & Northwestern Railway Co.* v. *Osborne*, 354.

CHALLENGE.

See CRIMINAL LAW, 3, 4, 5, 6.

CHARTER-PARTY.

See ADMIRALTY.

CHATTEL MORTGAGE.

See BAILMENT.

CHICAGO.

See ILLINOIS CENTRAL RAILROAD;
RIPARIAN OWNER, 2, 3.

CIRCUIT COURTS OF THE UNITED STATES.

For the purpose of determining the amount of compensation to be paid to a marshal of the United States for attending Circuit and District Courts, under Rev. Stat. § 829, *Held*, that the court is "in session" only when it is open by its order, for the transaction of business, and that if it be closed by its own order for an entire day, or for any given number of days, it is not then in session, although the current term may not have expired. *McMullen* v. *United States*, 360.

See JURISDICTION, C.

CITIZENSHIP.

See JURISDICTION, C, 2, 3, 4.

CLAIMS AGAINST THE UNITED STATES.

See ALABAMA CLAIMS.

COMMON CARRIER.

See COURT AND JURY, 1.

CONDEMNATION PROCEEDINGS.

See CONFISCATION, 3, 4, 5.

CONFISCATION.

1. The estate forfeited by proceedings to judgment under the confiscation act of July 17, 1862, 12 Stat. 589, c. 195, and the joint resolution of the same date, 12 Stat. 627, is the life estate of the offender; the fee remaining in him after the confiscation, but without power of alienation until his disability is removed. *United States* v. *Dunnington*, 338.
2. The conflicting cases on the subject of proceedings under that act reviewed, and *Illinois Central Railroad* v. *Bosworth*, 133 U. S. 92, and *Jenkins* v. *Collard*, 145 U. S. 546, followed. *Ib.*
3. A judicial condemnation, for the use of the United States, of land in Washington which had been so confiscated and sold, made during the lifetime of the offender from whom it had been taken under the confiscation act, is *held* to operate upon the fee as well as upon the life estate, assuming that due and legal notice of the proceedings for the condemnation were given. *Ib.*
4. The appraised value of the property in such proceedings for condemnation represents the whole fee, and the interests, both present and prospective, of every person concerned in it. *Ib.*
5. By the payment into court of the amount of the appraised value of the property so condemned, the United States was discharged from its whole liability, and was not even entitled to notice of the order for the distribution of the money. *Ib.*

CONFLICT OF LAWS.

See STATUTE, D, 2.

CONSTITUTIONAL LAW.

1. The validity of a state law providing for the appointment of electors of President and Vice-President having been drawn in question before the highest tribunal of a State, as repugnant to the laws and Constitution of the United States, and that court having decided in favor of its validity, this court has jurisdiction to review the judgment under Rev. Stat. § 709. *McPherson* v. *Blacker*, 1.
2. Under the second clause of Article II of the Constitution, the legislatures of the several States have exclusive power to direct the manner in which the electors of President and Vice-President shall be appointed. *Ib.*
3. Such appointment may be made by the legislatures directly, or by popular vote in districts, or by general ticket, as may be provided by the legislature. *Ib.*
4. If the terms of the clause left the question of power in doubt, con-

temporaneous and continuous subsequent practical construction has determined the question as above stated. *Ib.*

5. The second clause of Article II of the Constitution was not amended by the Fourteenth and Fifteenth Amendments, and they do not limit the power of appointment to the particular manner pursued at the time of the adoption of these amendments, or secure to every male inhabitant of a State, being a citizen of the United States, the right from the time of his majority to vote for presidential electors. *Ib.*
6. A state law fixing a date for the meeting of electors, differing from that prescribed by the act of Congress, is not thereby wholly invalidated; but the date may be rejected and the law stand. *Ib.*
7. The provision in Sec. 10 of Art. I, of the Constitution of the United States that "no State shall" "pass any" "law impairing the obligation of contracts," does not forbid a State from legislating, within its discretion, to reduce the rate of interest upon judgments previously obtained in its courts; as the judgment creditor has no contract whatever in that respect with the judgment debtor, and as the former's right to receive, and the latter's obligation to pay exists only as to such an amount of interest as the State chooses to prescribe as a penalty or liquidated damages for the nonpayment of the judgment. *Morley* v. *Lake Shore & Michigan Southern Railway Co.*, 162.
8. A state statute reducing the rate of interest upon all judgments obtained within the courts of the State does not, when applied to one obtained previous to its passage, deprive the judgment creditor of his property without due process of law, in violation of the provisions of Section 1 of the Fourteenth Amendment to the Constitution of the United States. *Ib.*
9. The provision in section 2486 of the Revised Statutes of Ohio, authorizing cities and villages in that State to erect gas-works at the expense of the municipality, or to purchase any gas-works therein, do not infringe the contract clause of the Constitution of the United States when exercised by a municipality, within which a gas company has been authorized, under the provisions of the acts of May 1, 1852, and March 11, 1853, to lay down pipes and mains in the public streets and alleys and to supply the inhabitants with gas, and has exercised that power; and with which the municipal authorities have contracted, by contracts which have expired by their own limitation, to supply the public streets, lanes and alleys of the municipality with gas. *Hamilton Gas Light & Coke Co.* v. *Hamilton City*, 258.
10. A municipal ordinance not passed under legislative authority, is not a law of the State within the meaning of the constitutional prohibition against state laws impairing the obligation of contracts. *Ib.*
11. The general rule that a valid grant to a corporation, by a statute of a State, of the right of exemption from state taxation, given without reservation of the right of appeal, is a contract between the State and the corporation, protected by the Constitution of the United States

against state legislative impairment, is not qualified by *Henderson Bridge Co.* v. *Henderson City*, 141 U. S. 679; nor by *St. Paul, Minneapolis &c. Railway* v. *Todd County*, 142 U. S. 282. *Wilmington & Weldon Railroad Co.* v. *Alsbrook*, 279.

12. A state statute, conferring upon one charged with crime the right to waive a trial by jury and to elect to be tried by the court, and conferring power upon the court to try the accused in such case, is not in conflict with the Constitution of the United States. *Hallinger* v. *Davis*, 314.
13. When a prisoner, charged with the crime of murder committed in a State, pleads guilty, the proper court of the State may, if its laws permit, proceed to inquire on evidence, without the intervention of a jury, in what degree of murder the accused is guilty, and may find him to be guilty of murder in the first degree, and may thereupon sentence him to death, without thereby violating the provision in the Fourteenth Amendment to the Constitution of the United States that no State shall "deprive any person of life, liberty or property without due process of law." *Ib.*
14. The Constitution permits a State to cede to the United States jurisdiction over a portion of its territory. *Benson* v. *United States*, 325.
15. An allegation — in a petition to a state court for a writ of prohibition to restrain State Harbor Commissioners from extending or locating harbor lines over wharves erected by and belonging to the petitioner — that the petitioner is and for thirty years past has been the owner of the wharf and of the uplands abutting on the shore upon which the wharf was constructed, does not set up or claim a title, right, privilege or immunity under the Constitution, or a statute of, or authority exercised under the United States, so as to give jurisdiction to this court to review the judgment of the highest court of the State denying the writ. *Yesler* v. *Washington Harbor Line Commissioners*, 646.
16. Such a judgment does not deprive the owner of the wharf of his property without due process of law; nor is it in conflict with the provisions of the act of September 19, 1890, (26 Stat. 426, 454, c. 907,) concerning the construction of wharves, etc., in navigable waters of the United States where no harbor lines are established. *Ib.*
17. If a judgment for a fixed sum of money, recovered in one State by a creditor of a corporation against one of its officers upon a liability for all its debts, imposed by a statute of that State for making and recording a false certificate of the amount of its capital stock, is sued on in a court of another State, and that court declines to enforce it, because of its opinion that such liability was a penalty, the judgment is thereby denied the full faith, credit and effect to which it is entitled under the Constitution and laws of the United States. *Huntington* v. *Attrill*, 657.

See ALABAMA CLAIMS;
CONTRACT, 4;
JURISDICTION, B, 17, 18; C, 4;
STATUTE, D, 1, 3, 4;
TAXATION, 1, 3.

CONTRACT.

1. By a contract in writing V. agreed to make for B. certain cotton-seed oil-mill machinery, at a fixed price. It was made and shipped to B. and not paid for. B. put it into use and afterwards executed to L. a mortgage covering it. V. then brought a suit in detinue against C., a bailee of L., for the property. L. was made a codefendant. After the mortgage was given, B. executed to V. notes for what was due to V. for the purchase money of the machinery, which stated that the express condition of the delivery of the machinery was that the title to it did not pass from V. until the purchase money was paid in full. *Held*, that the terms of the written contract could not be varied by parol evidence. *Van Winkle* v. *Crowell*, 42.
2. The condition of the title to the machinery at and before the giving of the mortgage was a conclusion of law to be drawn from the undisputed facts of the case. *Ib.*
3. It was proper to direct the jury to find for the defendant. *Ib.*
4. There can be no irrepealable contract in a conveyance of property by a grantor in disregard of a public trust, under which he was bound to hold and manage it. *Illinois Central Railroad* v. *Illinois*, 387.

See ADMIRALTY; CORPORATION, 4; STATUTE, D, 1.

CORPORATION.

1. A Massachusetts corporation brought a suit in equity in the Circuit Court of the United States for the Southern District of New York, against a citizen of New York, founded on a judgment obtained by it in a state court of Connecticut, and an execution issued there, and returned unsatisfied, against a Connecticut corporation, to compel the defendant to pay what he owed on his subscription to shares of stock in the Connecticut corporation, and have it applied towards paying the debts of that corporation, including one due to the plaintiff. *Held*, that the bill was defective in not alleging any judgment in New York against the corporation, or any effort to obtain one, or that it was impossible to obtain one. *National Tube Works Co.* v. *Ballou*, 517.
2. Any arrangement by which directors of a corporation become interested adversely to the corporation in contracts with it, or organize or take stock in companies or associations for the purpose of entering into contracts with the corporation, or become parties to any undertaking to secure to themselves a share in the profits of any transactions to which the corporation is a party, is looked upon with suspicion. *McGourkey* v. *Toledo & Ohio Central Railway*, 536.
3. On all the facts in this case, as detailed in the opinion of the court, *held*; (1) That the contracts with the trustee for the holders of the car-trust certificates was voidable at the election of the corporation; (2) That it was in law a purchase by the railway of the rolling stock in ques-

tion; (3) That the device of the certificates was inoperative to vest the legal title in the petitioner, or to prevent the lien of the railway mortgage from attaching to it, or to prevent the delivery of the rolling stock to the road; (4) That being the property of the road the petitioner was not entitled to rent; (5) That the leases might be treated as mortgages, and that the petitioner's interest thereunder was subordinate to that of the mortgage bondholders; (6) That the transaction, though not an actual fraud, was a constructive fraud upon the mortgagees. *Ib.*

4. In 1881, H., a citizen of Ohio, through P., M. and others of Chicago, speculated in grain in the markets of the latter city, lost money, and settled with his Chicago creditors by agreeing to convert a narrow gauge railroad in Ohio, which he owned, into a standard gauge, and to extend the same to places named in the agreement, and to organize a new company to take the property thus altered and extended, and to cause the new company to issue bonds which the creditors were to take in satisfaction of their respective debts. The company was organized; the stock and bonds were issued and delivered to H., except a small amount of stock which was issued to sundry persons to enable them to become directors; and H. passed over the property to the company. The value of the property so conveyed was very much less than the face value of the stock and bonds so issued for it. No money payments of subscription to the stock were made by H. to the company. The railway company soon became insolvent, and in 1885, after recovery of judgments against it for amounts due and payable on its bonds, P., M. and the other creditors filed a bill in equity to compel H. to pay his subscriptions in cash. A part of the stock of H. having been passed over to L., the bill set forth that that transfer had been made for the benefit of H., and sought to make H. liable in like manner for that stock. H. answered to the bill. Afterwards he became insolvent, and made an assignment of his estate for the benefit of his creditors. The assignee then appeared, and set up that the only consideration for the original debts of P., M. and others was an illegal gambling transaction, by betting upon future values of wheat; that the claims which formed the sole consideration for the transfer of the bonds was a pretended balance of said winnings; and that the judgments were founded on the bonds so transferred and on no other consideration. There were other pleadings which need not be detailed. The allegations respecting the character of the grain transactions were, on motion, stricken out by the court below. *Held*, (1) That the organization was grossly fraudulent from first to last, without a single honest incident or redeeming feature; (2) That P., M. and the other Chicago creditors had not only no knowledge or complicity in the company's illegal organization, but that they understood that the stockholders were to be subject to the liability imposed by the law of Ohio, namely, full payment in money or its equivalent, and, in addi-

tion, 100 per cent; (3) That the evidence, if taken to be true, did not establish a gambling transaction between H. and P., M. and the other creditors; (4) That, therefore, the defendant was not injured by the action of the court in striking out allegations regarding these transactions, and in afterwards passing upon them; (5) That the same measure of liability applied to the stock of H. standing in L.'s name which applied to that standing in his own name; (6) That as the attention of the court below was not called to the question of the allowance of interest, this court would not disturb the decree in that respect. *Lloyd* v. *Preston*, 630.

5. The directors of a corporation organized under the laws of Pennsylvania voted to make an assignment of the property of the corporation for the benefit of its creditors, which vote was ratified by the stockholders. They further voted to make a mortgage to secure a claim of one of the directors as a preferred claim. The assignment was made without making the mortgage. In an action by the assignee to enforce payment from a stockholder of his subscription to the stock, *held*, that the defendant could not set up the failure to make the mortgage as invalidating the assignment. *Potts* v. *Wallace*, 689.
6. When the assets of an insolvent corporation, organized under the laws of Pennsylvania, fail to meet the liabilities of the company by an amount equal to or greater than the sum due the company from a stockholder by reason of unpaid subscriptions to his stock the assignee has an action at law against him to recover such unpaid subscriptions without first resorting to equity for an assessment. *Ib.*
7. In an action against a stockholder in an insolvent corporation to recover unpaid subscription to his stock for the benefit of creditors, it is no defence to show that when the corporation was solvent he offered to pay in full and his offer was declined, if it also further appear that he refused to be absolved from his contract, and stood upon his rights as a stockholder until the company became embarrassed. *Ib.*

See CONSTITUTIONAL LAW, 17;
JURISDICTION, C, 4;
PENAL LAW, 1.

COURT AND JURY.

1. A direction of the Circuit Court to the jury to find for the defendant in an action against a common carrier for causing the death of a passenger, on the ground that the evidence did not establish negligence on the part of the carrier, and did show contributory negligence on the part of the passenger, is approved. *Mitchell* v. *New York, Lake Erie & Western Railroad Co.*, 513.
2. When the plaintiff's evidence makes out a *prima facie* case, and the defendant, after going into his evidence, does not go to the jury on the question of fact, he abandons his defence, so far as it depends on

his own evidence, and takes the position that the plaintiff's evidence does not make out a case. *Potts* v. *Wallace*, 689.

See BAILMENT; CONTRACT, 3; CUSTOMS DUTIES, 2; EVIDENCE, 10; PRACTICE, 2.

CRIMINAL LAW.

1. The provision in section 845 of the Revised Statutes of the District of Columbia that when the judgment in a criminal case is death or confinement in the penitentiary the court shall, on application of the party condemned, to enable him to apply for a writ of error, "postpone the final execution thereof," etc., relates only to the right of the accused to a postponement of the day of executing his sentence, in case he applies for it in order to have a review of an alleged error; and, with the exception of this restriction, the power of the court was left as it had been at common law. *In re Cross*, 271.
2. In trials for felonies it is not in the power of the prisoner either by himself or his counsel, to waive the right to be personally present during the trial. *Lewis* v. *United States*, 370.
3. The making of challenges is an essential part of the trial of a person accused of crime, and it is one of his substantial rights to be brought face to face with the jurors when the challenges are made. *Ib.*
4. Though no specific exception was taken in this case by the prisoner, based upon the fact that he was called upon to challenge jurors not before him, a general exception, taken to the action of the court in prescribing the method of procedure, was sufficient. *Ib.*
5. Where no due exception to the language of the court in instructing the jury is taken at the trial, this court cannot consider whether the trial court went beyond the verge of propriety in its instructions. *Ib.*
6. On the trial of the case, after the accused had pleaded not guilty to the indictment, the court directed two lists of thirty-seven qualified jurymen to be made out by the clerk, one to be given to the district attorney and one to the counsel for the defendant, and further directed each side to proceed with its challenges, independently of the other, and without knowledge on the part of either as to what challenges had been made by the other. To this method of proceeding, the defendant at the time excepted, but was required to proceed to make his challenges. He challenged twenty persons from the list of thirty-seven persons from which he made his challenges, but in doing so he challenged three jurors who were also challenged by the government. The government challenged from the list of thirty-seven persons five persons, three of whom were the same persons challenged by the defendant. This fact was made to appear from the lists of jurors used by the government in making its challenges and the defendant in

making his challenges. To the happening of the fact that both parties challenged the same three jurors, the defendant at the time objected, but the court overruled the objection, and directed the jury to be called from the said two lists, impanelled and sworn, to which the defendant at the time excepted. *Held*, that there was substantial error in this proceeding and the judgment of guilty must be reversed. *Ib.*

See CONSTITUTIONAL LAW, 12, 13;
EVIDENCE, 4, 5, 6, 13.

CUSTOMS DUTIES.

1. A reappraisement of imported merchandise under the provisions of Rev. Stat. § 2930, when properly conducted, is binding. *Earnshaw* v. *United States*, 60.
2. When the facts are undisputed in an action to recover back money paid to a collector of customs on such reappraisement, the reasonableness of the notice to the importer of the time and place appointed for the reappraisement is a question of law for the court. *Ib.*
3. Appraisers appointed under the provisions of Rev. Stat. § 2930 to reappraise imported goods constitute a quasi-judicial tribunal, whose action within its discretion, when that discretion is not abused, is final. *Ib.*
4. An importer appealed from an appraisement of goods imported into New York, in 1882. A day in June, 1883, was fixed for hearing the appeal. The government, not being then ready, asked for an adjournment, which was granted without fixing a day, and the importer was informed that he would be notified when the case would be heard. March 19, 1884, notice was sent by letter to him at his residence in Philadelphia, that the appraisement would take place in New York, on the following day. His clerk replied by letter that the importer was absent, in Cuba, not to return before the beginning of May then next, and asked a postponement till that time. The appraisers replied by telegram that the case was adjourned until March 25. On the latter day the case was taken up and disposed of, in the absence of the importer or of any person representing him. *Held*, (1) That the notices of the meetings in March were sufficient; (2) That, in view of the neglect of the importer to make any provision for the case being taken up in his absence, and of his clerk to appear and ask for a further postponement of the hearing, the court could not say that the appraisers acted unreasonably in proceeding *ex parte*, and in imposing the additional duties without awaiting his return. *Ib.*
5. Paintings upon glass, consisting of pieces of variously colored glass, cut into irregular shapes and fastened together by strips of lead, painted by artists of superior merit especially trained for the work, representing biblical subjects and characters, and intended to be used as windows in a religious institution, imported in fragments to be put together in this country in the form of such windows, are subject to the duty of 45

per cent imposed by paragraph 122 of the tariff act of October 1, 1890, 26 Stat. 573, c. 1244, upon stained or painted window glass and stained or painted glass windows wholly or partly manufactured, and not specially provided for by this act; and not to the duty imposed by paragraph 677, 26 Stat. 608, c. 1244, upon paintings specially imported in good faith for the use of any society or institution established for religious purposes, and not intended for sale. *United States* v. *Perry*, 71.

6. In the latter part of October, 1890, the firm of S., D. & G. imported from Europe articles described in the entry as "finished gunstocks with locks and mountings," unaccompanied by barrels for the guns. The collector levied duty on them as guns, under paragraph 170, in Schedule C of the act of October 1, 1890, c. 1244, (26 Stat. 579.) The importers protested that they were dutiable as manufactures of iron, under paragraph 215 of Schedule C of the act. The general appraisers affirmed the decision of the collector. It did not appear that the gunstocks had formed part of completed guns in Europe, and the question of the importation of the barrels was not involved, although it appeared that the gunstocks were intended to be put with barrels otherwise ordered, to form complete guns. The Circuit Court, on appeal by the importers, reversed the decision. On appeal to this court, by the United States; *Held*, that the decision of the Circuit Court was correct. *United States* v. *Schoverling*, 76.
7. The provision of § 2 of the act of January 29, 1795, (1 Stat. 411,) is not still in force. *Ib.*
8. In construing tariff acts an article may be held to be enumerated, although not specifically mentioned, if it be designated in a way to distinguish it from other articles. *Junge* v. *Hedden*, 233.
9. *Arthur* v. *Butterfield*, 125 U. S. 170, and *Mason* v. *Robertson*, 139 U. S. 624, cited and approved. *Ib.*
10. The meaning of the term "article," when used in a tariff act, considered. *Ib.*
11. Dental rubber, imported into the United States in 1885 was subject to a duty of 25 per cent *ad valorem*, as an article composed of india-rubber not specially enumerated. *Ib.*
12. Imported articles, used as head-coverings for men, invoiced as "Scotch bonnets," and entered, some as "worsted knit bonnets," and others as "worsted caps," and made of wool, knitted on frames, were liable to duty as "knit goods made on knitting frames," under "Schedule K, Wool and Woollens," of § 2502 of the Revised Statutes, as enacted by § 6 of the act of March 3, 1883, c. 21, (22 Stat. 509,) and not under "Schedule N–Sundries," of the same section, § 2502, p. 511, as "bonnets, hats and hoods for men, women and children." *Toplitz* v. *Hedden*, 252.

See EVIDENCE, 9, 10;
JURISDICTION, B, 2.

DEMURRER.

See JURISDICTION, C, 2, 3.

DILIGENCE.

See EQUITY, 1 to 7.

DISTRICT COURTS OF THE UNITED STATES.

See CIRCUIT COURTS OF THE UNITED STATES;
JURISDICTION, C.

DISTRICT OF COLUMBIA.

See CRIMINAL LAW, 1;
JURISDICTION, B, 3, 10.

ELECTORS OF PRESIDENT AND VICE PRESIDENT.

See CONSTITUTIONAL LAW, 1, 2, 3, 4, 5, 6.

EMINENT DOMAIN.

See CONFISCATION, 3, 4, 5.

EQUITY.

1. If a bill to set aside a foreclosure sale of a railroad under a mortgage, on the ground of fraud and collusion, be not filed until ten years after the sale, a presumption of laches arises which it is incumbent on the plaintiff to rebut. *Foster* v. *Mansfield, Coldwater & Lake Michigan Railroad Co.*, 88.
2. The tendency of the courts is, in such cases, to hold the plaintiff to a rigid compliance with the law, which demands not only that he should have been ignorant of the fraud, but should have used reasonable diligence to inform himself of all the facts; and especially is this the case where the subject of the fraud is a railroad, and the plaintiff is a holder of its stock and a resident of the neighborhood in which the fraud is alleged to have taken place. *Ib.*
3. No negligence is imputable in such case to a person who is ignorant of his interest in the property which is the subject of the alleged fraud; but if he is aware of his interest, and knows that proceedings are pending, the result of which may be prejudicial to them, he is bound to look into such proceedings so far as to see that no action is taken to his detriment. *Ib.*
4. In such a suit to set aside a foreclosure sale of a railroad, if the plaintiff does not show at least a probability of a personal advantage to himself by its being done, it is a circumstance against him, as a court of equity is not called upon to do a vain thing. *Ib.*

5. In such a case if it appear that the parties really in interest are content that the decree stand, it should not be set aside at the suit of one who could not possibly obtain a benefit from such action. *Ib.*

6. Ten years after the foreclosure and sale of a railroad, F. who was a stockholder, and resident in the vicinity, and who had, or might have had, access to all the proceedings in the foreclosure suit, filed a bill to set aside the foreclosure and sale upon the ground of collusion and fraud. The alleged acts of collusion and fraud were patent on the face of the proceedings. The property was incumbered, and it did not appear, from the pleadings, nor was there any probability from the facts stated, that any benefit would result to the plaintiff from setting aside the sale. *Held*, (1) That F. had been guilty of laches and that the suit was brought too late; (2) That the court would not entertain a bill to vindicate an abstract principle of justice, or to compel the defendants to buy their peace. *Ib.*

7. The doctrine of laches applied to a suit in equity, the bill having been filed in 1881, more than 35 years after the cause of action accrued; and information having been obtained by the agent of the plaintiffs, in 1843, which imposed the duty of further inquiry; and like information having been obtained in 1854, and in 1858, and in 1869. *Ware* v. *Galveston City Co.*, 102.

8. There was no distinct averment in the bill as to the time when the alleged fraud was discovered, and what the discovery was, nor did the bill or the proof show that the delay was consistent with the requisite diligence. *Ib.*

9. As to the statute of limitation, as affecting the question of laches, all the plaintiffs were capable of suing from 1854. *Ib.*

10. On the facts in this case detailed in the opinion it is *held*, (1) That the deed from Balloch to Hooper of February 25, 1880, was given to better secure Balloch's indebtedness to the Life Insurance Company; (2) That that company believed in good faith that Hooper was authorized, as holder of the legal title of record, to raise money on the property, and secure its payment by deed of trust; (3) That there was nothing in the relations between Hooper and Balloch which would prevent the company loaning money to Hooper on the security of the property; (4) That there was no evidence of a fraudulent combination to injure Balloch; (5) That there was no ground for questioning the accuracy of the accounting. *Balloch* v. *Hooper*, 363.

See CORPORATION, 1;
NATIONAL BANK, 7.

ESTOPPEL.

The proceedings in *Wilmington Railroad* v. *Reid*, 13 Wall. 264, and in the same case in the state courts of North Carolina, do not operate as an estoppel so far as the road from Halifax to Weldon is concerned, nor

as controlling authority in the premises. *Wilmington & Weldon Railroad Co.* v. *Alsbrook*, 279.

EVIDENCE.

1. When the trial court excludes affidavits offered in support of a motion for a new trial, and due exception is taken, and that court, in passing upon the motion exercises no discretion in respect of the matters stated in the affidavits, the question of the admissibility of the affidavits is preserved for the consideration of this court on a writ of error, notwithstanding the general rule that the allowance or refusal of a new trial rests in the sound discretion of the court to which the application is addressed. *Clyde Mattox* v. *United States*, 140.
2. In determining what may or may not be established by the testimony of jurors to set aside a verdict, public policy forbids that a matter resting in the personal consciousness of one juror should be received to overthrow it; but evidence of an overt act, open to the knowledge of all the jury, may be so received. *Ib.*
3. On a motion for a new trial on the ground of bias on the part of one of the jurors, the evidence of jurors as to the motives and influences which affected their deliberations is inadmissible either to impeach or support the verdict; but a juryman may testify to any facts bearing upon the question of the existence of any extraneous influence, although not as to how far that influence operated on his mind; and he may also testify in denial or explanation of acts or declarations outside of the jury room, where evidence of such acts has been given as ground for a new trial. *Ib.*
4. The jury in this case, (an indictment for murder,) retired October 7, to consider their verdict. On the morning of October 8, they had not agreed on their verdict. A newspaper article was then read to them, the tendency of which was injurious to the accused. They returned a verdict of guilty. Affidavits of jurors of this fact were offered in support of a motion for a new trial, and were rejected. *Held*, that this was reversible error. *Ib.*
5. Dying declarations are admissible on a trial for murder as to the fact of the homicide and the person by whom it was committed, in favor of the defendant. *Ib.*
6. In this case, a few hours after the commission of the act, and while the wounded man was perfectly conscious, the attending physician informed him that the chances were all against him, and that there was no show for him. He was then asked who did the shooting. He replied that he did not know. The evidence of this was received without objection. Defendant's counsel then asked whether in addition to saying that he did not know who shot him, he did not say further that he knew the accused and knew that it was not he. This was objected to on the ground of incompetency, and the objection sustained. *Held*, that this was error. *Ib.*

7. Testimony held competent, on the cross-examination of a witness, as affecting his credibility, in view of contradictory statements which he had made. *Toplitz* v. *Hedden*, 252.
8. An exception to a copy of a paper is unavailing, where both sides treated it as a copy, and no ground of objection to it as evidence is set forth. *Ib.*
9. It was proper, in an action brought by the importer against the collector, to recover duties paid under protest, for the defendant to show that the articles were not known, on or immediately before March 3, 1883, in trade and commerce as "bonnets for men." *Ib.*
10. It was right on the evidence for the court to direct a verdict for the defendant, especially as the plaintiff refused to go to the jury on the question as to whether on March 3, 1883, the word "bonnet" had in this country a well-known technical, commercial designation such as would cover the goods in question. *Ib.*
11. If a party does not object to testimony when offered, he cannot afterwards be heard to say that there was error in receiving it. *Benson* v. *United States*, 325.
12. An objection to the competency of testimony made after the witness has left the stand, and after several other witnesses have been subsequently examined, comes too late; and a motion, in such case, to strike out the testimony on the ground of incompetency, is *held* to have been properly overruled. *Ib.*
13. When two persons are jointly indicted for crime, and a severance is ordered, one of the accused, whose case is undisposed of, may be called and examined as a witness on behalf of the government against his co-defendant. *Ib.*

See COURT AND JURY, 2.

FRAUD.

See CORPORATION, 3 (6); 4 (1).

GAMBLING CONTRACT.

See CORPORATION, 4 (3).

HABEAS CORPUS.

1. The exercise of the power to issue writs of *habeas corpus* to a state court proceeding in disregard of rights secured by the Constitution and laws of the United States, before the question has been raised or determined in the state court, is one which ought not to be encouraged. *Cook* v. *Hart*, 183.
2. In this case the court affirms the judgment of the Circuit Court refusing to discharge on writ of *habeas corpus* a prisoner who had been surrendered by the Governor of Illinois on the requisition of the Governor of Wisconsin as a fugitive from justice, but who claimed

not to have been such a fugitive, it appearing that the case was still pending in the courts of the State of Wisconsin, and had not been tried upon its merits; and this court further *held*, (1) That no defect of jurisdiction was waived by submitting to a trial on the merits; (2) That comity demanded that the state court should be appealed to in the first instance; (3) That a denial of his rights there would not impair his remedy in the Federal courts; (4) That no special circumstances existed here such as were referred to in *Ex parte Royall*, 117 U. S. 241. *Ib.*

See JURISDICTION, B, 3.

ILLINOIS CENTRAL RAILROAD.

1. The roadway of the Illinois Central Railroad at Chicago as now constructed, two hundred feet in width, for the whole distance allowed for its entry within the city, with the tracks thereon, and with all the guards against danger in its approach and crossings, and the breakwater beyond its tracks on the east, and the necessary works for the protection of the shore on the west, in no respect interfere with any useful freedom in the use of the waters of the lake for commerce, foreign, interstate or domestic; and, as they were constructed under the authority of the law, (Stat. of February 17, 1851, Laws Ill. 1851, 192,) by the requirement of the city as a condition of its consent that the company might locate its road within its limits, (Ordinance of June 14, 1852,) they cannot be regarded as such an encroachment upon the domain of the State as to require the interposition of the court for their removal or for any restraint in their use. *Illinois Central Railroad Co.* v. *Illinois*, 387.
2. The Illinois Central Railroad Company never acquired by the reclamation from the waters of the lake of the land upon which its tracks are laid, or by the construction of the road and works connected therewith, an absolute fee in the tract reclaimed, with a consequent right to dispose of the same to other parties, or to use it for any other purpose than the one designated — the construction and operation of a railroad thereon, with one or more tracks and works, in connection with the road or in aid thereof. *Ib.*
3. That company acquired by the construction of its road and other works no right as a riparian owner to reclaim still further lands from the waters of the lake for its use, or for the construction of piers, docks and wharves in the furtherance of its business; but the extent to which it could reclaim the land under water was limited by the conditions of the ordinance of June 14, 1852, which was simply for the construction of a railroad on a tract not to exceed a specified width, and of works connected therewith. *Ib.*
4. The railroad company owns and has the right to use in its business the reclaimed land and the slips and piers in front of the lots on the lake north of Randolph Street which were acquired by it, and in front of

Michigan Avenue between the lines of Twelfth and Sixteenth Streets, extended, unless it shall be found by the Circuit Court on further examination, that the piers as constructed extend beyond the point of navigability in the waters of the lake; about which this court is not fully satisfied from the evidence in this case. *Ib.*

5. The railroad company further has the right to continue to use as an additional means of approaching and using its station-grounds, the spaces and the rights granted to it by the ordinances of the city of Chicago of September 10, 1855, and of September 15, 1856. *Ib.*

6. The act of the Legislature of Illinois of April 16, 1869, granting to the Illinois Central Railroad Company, its successors and assigns, "all the right and title of the State of Illinois in and to the submerged lands constituting the bed of Lake Michigan, and lying east of the tracks and breakwater of the Illinois Central Railroad Company, for the distance of one mile, and between the south line of the south pier extended eastwardly and a line extended eastward from the south line of lot twenty-one, south of and near to the roundhouse and machine shops of said company, in the south division of the said city of Chicago," cannot be invoked so as to extend riparian rights which the company possessed from its ownership of lands in sections 10 and 15 on the lake; and as to the remaining submerged lands, it was not competent for the legislature to thus deprive the State of its ownership of the submerged lands in the harbor of Chicago, and of the consequent control of its waters; and the attempted cession by the act of April 16, 1869, was inoperative to affect, modify or in any respect to control the sovereignty and dominion of the State over the lands, or its ownership thereof, and any such attempted operation of the act was annulled by the repealing act of April 15, 1873, which to that extent was valid and effective. *Ib.*

See RIPARIAN OWNER.

INSOLVENT LAWS OF A STATE.

See ALABAMA CLAIMS.

INTEREST.

See STATUTE, D, 1.

INTERNAL REVENUE.

A decision by the Commissioner of Internal Revenue on an application for the refunding of taxes collected, authorizing the same to be refunded, which was made under the authority conferred upon him by the act of July 13, 1866, c. 184, § 9, 14 Stat. c. 184, pp. 98, 109, 111, (Rev. Stat. § 3220) and was reported to the Secretary of the Treasury for his consideration and advisement July 26, 1871, under the Treasury Regulations then in force, is held by the court not to have been a final decision, but to have been subject to revision by the secretary and to be returned

by him to the successor of the commissioner for reëxamination. *Stotesbury* v. *United States*, 196.

JUDGMENT.

1. On the 2d of April, 1884, M. filed a petition to intervene in a suit which had been commenced January 2, 1884, for the purpose of foreclosing a mortgage on a railroad. A receiver had been appointed and was in possession of the road and rolling stock. The intervenor claimed title to a large part of the latter. The petition prayed (1) that the receiver perform all the covenants of the lease, and pay all sums due, etc; (2) or that he be directed to deliver to petitioner the rolling stock in order that the same might be sold; (3) that he be directed to file a statement of the number of miles run, and of the sums received for the use of such rolling stock; (4) that it be referred to an examiner to take testimony and report the value of the use of such rolling stock while in the custody of the receiver, and that the receiver be directed to pay the amount justly due, etc. On the 10th of December, 1884, a decree of foreclosure and sale of the railroad and after acquired property was entered. On the 9th of June, 1885, a decree was rendered upon the intervening petition ordering the receiver to deliver up to the petitioner certain cars and locomotives to be sold. On the 14th of August, 1886, answers were filed, under leave, to the intervening petitions, setting up title in the respondents to the rolling stock. The court found against the intervenor as to most of the stock, and his petition was dismissed. *Held*, that the decree of June 9, 1885, was not a final judgment. *Mc Gourkey* v. *Toledo and Ohio Central Railway Co.*, 536.
2. If a court make a decree fixing the rights and liabilities of the parties and thereupon refer the case to a master for a ministerial purpose only, and no further proceedings in court are contemplated, the decree is final; but if it refer the case to him as a subordinate court, and for a judicial purpose, the decree is not final. *Ib.*
3. The cases respecting final and interlocutory judgments, and the distinction between them reviewed. *Ib.*

JURISDICTION.

A. Jurisdiction of the United States.

The United States has exclusive jurisdiction over the entire Fort Leavenworth reservation in Kansas, except as jurisdiction was reserved to the State of Kansas by the act of cession. *Benson* v. *United States*, 325.

B. Jurisdiction of the Supreme Court.

1. The judgment in the court below in this case was rendered April 25, 1891. On the 19th of June, 1891, an entry was made of record that the court "allows a writ of error to the Supreme Court of the United States,

with stay of execution, upon the filing of a supersedeas bond." Such bond was filed and approved June 20, 1891. The jurisdiction of this court in cases dependent upon diverse citizenship was taken away March 3, 1891, except as to pending cases and cases wherein the writ of error or appeal should be sued out or taken before July 1, 1891. In this case the petition for the writ and the assignment of errors were filed in the court below July 3, 1891, and the writ bore test on that day. On motion to dismiss for want of jurisdiction, *held*, that the writ was not sued out or taken before July 1, 1891, and that it must be dismissed. *Cincinnati Safe & Lock Co.* v. *Grand Rapids Safety Deposit Co.*, 54.

2. This court has no jurisdiction over a writ of error sued out June 11, 1892, from a judgment rendered by a Circuit Court of the United States against a collector of customs in a suit brought to recover back an alleged excess of duties paid upon an importation of goods made prior to the going into effect of the act of Congress of June 10, 1890, "to simplify the laws in relation to the collection of the revenues," 26 Stat. 131, c. 407. *Hubbard* v. *Soby*, 56.
3. This court has no jurisdiction over judgments of the Supreme Court of the District of Columbia on *habeas corpus*. *Cross* v. *Burke*, 82.
4. The statutes on this subject reviewed. *Ib.*
5. This court does not consider itself bound by expressions touching its jurisdiction found in an opinion in a case in which there was no contest on that point. *Ib.*
6. *Idaho & Oregon Land Co.* v. *Bradbury*, 132 U. S. 509, affirmed to the point that "the authority of this court, on appeal from a territorial court, is limited to determining whether the court's findings of fact support its judgment or decree, and whether there is any error in rulings, duly excepted to, on the admission or rejection of evidence, and does not extend to a consideration of the weight of evidence or its sufficiency to support the conclusions of the court." *San Pedro and Cañon del Agua Co.* v. *United States*, 120.
7. In error to a state court, although it may not appear from the opinion of the court of original jurisdiction, or from the opinion of the Supreme Court of the State, that either court formally passed upon any question of a Federal nature, yet, if the necessary effect of the decree was to determine, adversely to the plaintiff in error, rights and immunities in proceedings in bankruptcy, claimed by him in the pleadings and proof, the jurisdiction of this court may be invoked on the ground that a right or immunity, specially set up and claimed under the Constitution or authority of the United States, has been denied by the judgment sought to be reviewed. *Roby* v. *Colehour*, 153.
8. This court will not interfere to relieve persons who have been arrested and taken by violence from the territory of one State to that of another, where they are held under process legally issued from the courts of the latter State; as the question of the applicability of this doctrine to a particular case is as much within the province of a state court, as a

question of common law or of the law of nations, as it is of the courts of the United States. *Cook* v. *Hart*, 183.

9. Where a person is in custody under process from a state court of original jurisdiction for an alleged offence against the laws of that State, and it is claimed that he is restrained of his liberty in violation of the Constitution of the United States, a Circuit Court of the United States has a discretion whether it will discharge him in advance of his trial in the court in which he is indicted, which discretion will be subordinated to any special circumstances requiring immediate action. *Ib.*

10. With certain exceptions, within which this case does not fall, the statutes regulating appeals from the Supreme Court of the District of Columbia only apply to cases where there is a matter in dispute measurable by some sum or value in money. *Washington & Georgetown Railroad* v. *District of Columbia*, 227.

11. The appellate jurisdiction of this court, when dependent upon the sum in dispute between the parties, is to be tested without regard to the collateral effect of the judgment in another suit between the same or other parties; and this rule applies to a bill in equity to restrain the collection of a specific tax levied under a general and continuing law. *Ib.*

12. In such a suit the matter in dispute, in its relation to jurisdiction, is the particular tax attacked; and unaccrued or unspecified taxes cannot be included, upon conjecture, to make up the requisite jurisdictional amount. *Ib.*

13. This court has no jurisdiction of an appeal from a judgment of a Circuit Court remanding to a state court a cause which had been improperly removed from it. *Joy* v. *Adelbert College*, 355.

14. The writ of error in this case is dismissed because it does not appear that the jurisdictional amount is involved. *Cameron* v. *United States*, 533.

15. A writ of error to the Court of Appeals of a State, to review a judgment of that court dismissing an appeal and remanding the case for further proceedings in the state court below, is dismissed for want of jurisdiction. *Brown* v. *Baxter*, 619.

16. The opinion of the state court in rendering the judgment refusing the writ of prohibition stated that the relator was not entitled to the writ because he had other remedies of which he might have availed himself. *Held*, that this was broad enough to sustain the decree, irrespective of the decision of a Federal question, if any such arose. *Yesler* v. *Washington Harbor Line Commissioners*, 646.

17. A bill in equity in one State to set aside a conveyance of property made in fraud of creditors, and to charge it with the payment of a judgment since recovered by the plaintiff against the debtor in another State upon his liability as an officer in a corporation under a statute of that State, set forth the judgment and the cause of action on which it was recovered; and also asserted, independently of the judgment,

an original liability of the defendant as a stockholder and officer in that corporation before the conveyance. The highest court of the State declined to entertain the bill by virtue of the judgment, because it had been recovered in another State in an action for a penalty; or to maintain the bill on the original liability, for various reasons. *Held*, that the question whether due faith and credit were thereby denied to the judgment was a Federal question, of which this court had jurisdiction on writ of error. *Huntington* v. *Attrill*, 657.

18. If the highest court of a State declines to give full faith and credit to a judgment of another State, because in its opinion that judgment was for a penalty, this court, in determining whether full faith and credit have been given to that judgment, must decide for itself whether the original cause of action was penal, in the international sense. *Ib.*

See BANKRUPT, 2;
PRACTICE, 1.

C. JURISDICTION OF CIRCUIT COURTS OF THE UNITED STATES.

1. Under the act of March 3, 1887, c. 373, § 1, as corrected by the act of August 13, 1888, c. 866, a corporation incorporated in one State only, and doing business in another State, is not thereby liable to be sued in a Circuit Court of the United States, held in the latter State. *Southern Pacific Co.* v. *Denton*, 202.
2. The want of the requisite citizenship of parties to give jurisdiction to a Circuit Court of the United States, when apparent on the face of the petition, may be taken advantage of by demurrer. *Ib.*
3. An objection to the jurisdiction of a Circuit Court of the United States, for want of the requisite citizenship of the parties, is not waived by filing a demurrer for the special and single purpose of objecting to the jurisdiction, or by answering to the merits upon that demurrer being overruled. *Ib.*
4. The right of a corporation, sued in a Circuit Court of the United States, to contest its jurisdiction for want of the requisite citizenship of the parties, is not affected by a statute of the State in which the court is held, requiring a foreign corporation, before doing business in the State, to file with the secretary of state a copy of its charter, with a resolution authorizing service of process to be made on any officer or agent engaged in its business within the State, and agreeing to be subject to all the provisions of the statute, one of which is that the corporation shall not remove any suit from a court of the State into the Circuit Court of the United States; nor by doing business and appointing an agent within the State under that statute. *Ib.*
5. In this case this court reverses the judgment of the court below, declining to sustain it upon a jurisdictional ground not passed upon by that court. *Scott* v. *Armstrong*, 499.

See REMOVAL OF CAUSES;
STATUTE, D, 2.

D. JURISDICTION OF STATE COURTS.

It is as much within the province of a state court as it is of the courts of the United States, to decide, as a question of common law or of the law of nations whether a person arrested and taken by violence from the territory of one State to that of another, and held in the latter under process legally issued from its courts, is entitled to be discharged on a writ of *habeas corpus*. *Cook* v. *Hart*, 183.

JUROR.

See CRIMINAL LAW, 3, 4, 5, 6;
EVIDENCE, 2, 3, 4.

LACHES.

When the government has a direct pecuniary interest in the subject-matter of the litigation, the defences of stale claim and laches cannot be set up as a bar. *San Pedro & Cañon del Agua Co.* v. *United States*, 120.
See EQUITY, 1 to 9.

LAKES, THE GREAT.

See NAVIGABLE WATERS.

LEGISLATIVE GRANT.

See STATUTE, D, 3, 4.

LIMITATION, STATUTES OF.

See EQUITY, 9.

LIMITED LIABILITY.

See WRIT OF PROHIBITION.

LOCAL LAW.

OHIO: *See* CORPORATION, 4 (2), 5, 6.

MARSHAL.

The allowance of a marshal's account by the court does not preclude a revision of it by the proper officers in the treasury, nor justify its payment when it appears that such allowance was unauthorized by law. *McMullen* v. *United States*, 360.
See CIRCUIT COURTS OF THE UNITED STATES.

MASTER IN CHANCERY.

See JUDGMENT.

MORTGAGE.

See EQUITY, 1, 2, 4, 6.

NATIONAL BANK.

1. Where T. deposited with C., his broker, coupon railroad mortgage bonds, as margin for purchases of stocks, and C. pledged the bonds to a national bank, in 1874, as its customer, as collateral security for any indebtedness he might owe to the bank, and afterwards the bank paid and advanced for C. money on the faith of the bonds, and on like faith certified checks drawn on it by C., when C. had not on deposit in the bank moneys equal in amount to the checks: *Held*, under the act of March 3, 1869, c. 135, (15 Stat. 335,) now § 5208 of the Revised Statutes, that although the certifications were unlawful, the checks certified were good and valid obligations against the bank. *Thompson* v. *St. Nicholas National Bank*, 240.
2. The pledge of the bonds with the bank by C. was a valid contract, and entirely aside from the certifications; and the title of the bank to the bonds was not impaired by the certifications. *Ib.*
3. Where the provisions of the national banking act prohibit certain acts by banks or their officers, without imposing any penalty or forfeiture applicable to particular transactions which have been executed, their validity can be questioned only by the United States, and not by private parties. *Ib.*
4. The closing of a national bank by order of the examiner, the appointment of a receiver, and its dissolution by decree of a Circuit Court necessarily transfer the assets of the bank to the receiver. *Scott* v. *Armstrong*, 499.
5. The receiver in such case takes the assets in trust for creditors, and, in the absence of a statute to the contrary, subject to all claims and defences that might have been interposed against the insolvent corporation. *Ib.*
6. The ordinary equity rule of set-off in case of insolvency is that, where the mutual obligations have grown out of the same transaction, insolvency, on the one hand, justifies the set-off of the debt due, on the other; and there is nothing in the statutes relating to national banks which prevents the application of that rule to the receiver of an insolvent national bank under circumstances like those in this case. *Ib.*
7. A customer of a national bank who in good faith borrows money of the bank, gives his note therefor due at a future day, and deposits the amount borrowed to be drawn against, any balance to be applied to the payment of the note when due, has an equitable (but not a legal) right, in case of the insolvency and dissolution of the bank and the appointment of a receiver before the maturity of the note, to have the balance to his credit at the time of the insolvency applied to the payment of his indebtedness on the note. *Ib.*

NAVIGABLE WATERS.

1. The ownership of and dominion and sovereignty over lands covered by tide waters, within the limits of the several States, belong to the

respective States within which they are found, with the consequent right to use or dispose of any portion thereof, when that can be done without substantial impairment of the interest of the public in the waters, and subject always to the paramount right of Congress to control their navigation so far as may be necessary for the regulation of commerce with foreign nations and among the States. *Illinois Central Railroad Co.* v. *Illinois*, 387.

2. The same doctrine as to the dominion and sovereignty over and ownership of lands under the navigable waters of the Great Lakes applies, which obtains at the common law as to the dominion and sovereignty over and ownership of lands under tide waters on the borders of the sea, and the lands are held by the same right in the one case as in the other, and subject to the same trusts and limitations. *Ib.*

NEGLIGENCE.

See COURT AND JURY, 1;
EQUITY, 3.

NEW TRIAL, MOTION FOR.

See EVIDENCE, 1, 2, 3, 4.

PATENT FOR INVENTION.

1. An inventor applied, September 3, 1881, for letters patent for an "improvement in the construction of cable railways," the invention consisting in the employment of a connecting tie for the rails, and supports for the slot irons, by which both are rigidly supported from the tie and united to each other, the ties or frames being embedded in concrete, and the rails, the slot irons and the tube being thus connected in the same structure. The invention was conceived in 1876, and used by the inventor in constructing a cable road, which was put into use in April, 1878, and of which he was superintendent until after he applied for the patent, which was granted in August, 1882. *Held*, on the facts, (1) The use of the invention was not experimental; (2) The inventor reserved no future control over it; (3) He had no expectation of making any material changes in it, and never suggested or made a change after the structure went into use, and never made an examination with a view of seeing whether it was defective, or could be improved; (4) The use was such a public use as to defeat the patent; (5) The case of *Elizabeth* v. *Pavement Co.*, 97 U. S. 126, considered, and the present case held not to fall within its principles. *Root* v. *Third Avenue Railroad Co.*, 210.

2. The article claimed to be protected under the second claim in letters patent No. 224,993 issued February 24, 1880, to Joseph W. Kenna for a new and useful improvement in a combined child's chair and carriage, did not, with reference to the state of the art at the time, involve

invention in the opinion of the majority of the court; but all the judges concur in the opinion that the claim should receive a narrow construction, and that in this aspect of the case, the defendants' chairs did not infringe. *Derby* v. *Thompson*, 476.

3. Letters patent No. 224,991, granted to Alexander W. Brinkerhoff, March 2, 1880, for an improvement in rectal speculaare void for want of novelty in the invention protected by them. *Brinkerhoff* v. *Aloe*, 515.
4. The claim of letters patent No. 149,954, granted April 21, 1874, to Herman Royer for an "improvement in the modes of preparing rawhide for belting," namely, "The treatment of the prepared rawhide in the manner and for the purposes set forth," is a claim to the entire process described, consisting of eight steps, including the removal of the hair by sweating. *Royer* v. *Coupe*, 524.
5. Having put in a claim, in the course of his application, to the mode of preparing rawhides by the fulling operation and the preserving mixture, and that claim having been rejected, and then withdrawn; and having also claimed the prepared rawhide as a new article of manufacture, and that claim having been rejected, and then struck out by him; his patent cannot be construed as if it still contained such claims. *Ib.*
6. As the defendants did not use the sweating process they did not infringe. *Ib.*

PENAL LAW.

1. The question whether a statute of one State, which in some aspects may be called penal, is a penal law, in the international sense, so that it cannot be enforced in the courts of another State, depends upon the question whether its purpose is to punish an offence against the public justice of the State, or to afford a private remedy to a person injured by the wrongful act. *Huntington* v. *Attrill*, 657.
2. A statute making the officers of a corporation, who sign and record a false certificate of the amount of its capital stock, liable for all its debts, is not a penal law, in the international sense. *Ib.*
3. Whether a statute of one State is a penal law which cannot be enforced in another State is to be determined by the court which is called upon to enforce it. *Ib.*

See CONSTITUTIONAL LAW, 7, 17;
JURISDICTION, B, 17, 18.

PLEADING.

See JURISDICTION, C, 2, 3.

PLEDGE.

See BAILMENT.

PRACTICE.

1. The question whether a trial shall be postponed on account of the absence of a witness for the defendant, and the illness of one of his counsel, is a matter of sound discretion and will not be reviewed where no abuse is shown. *Means* v. *Bank of Randall*, 620.
2. No specific instructions were prayed for by the defendant, and no request was made to direct a verdict for him, but he only requested the court generally to submit instructions to the jury. *Ib.*

See APPEAL, 1, 2;
COURT AND JURY, 2;
CUSTOMS DUTIES, 4;
EVIDENCE, 1, 3, 4, 11;
PUBLIC LAND, 1.

PROHIBITION, WRIT OF.

See WRIT OF PROHIBITION.

PUBLIC LAND.

1. A bill in equity on the part of the United States to set aside a patent of public land issued by mistake or obtained by fraud will lie either when there are parties to whom the government is under obligation in respect to the relief invoked, or when the government has a direct pecuniary interest in such relief, each of which facts appears to exist in this case, and one of which is not denied in the letter of Attorney General Brewster, which is set forth in the opinion of the court. *San Pedro & Cañon del Agua Co.* v. *United States*, 120.
2. T. was a special agent and examiner of surveys for the Land Department. After this suit had been commenced, he was directed by the Land Department to proceed to the disputed territory and make an examination as to the survey. He did so, and besides making surveys and taking photographic views, he also obtained thirteen affidavits of witnesses, selected by himself, as to boundaries, etc. When called as a witness he produced these affidavits as part of his testimony, and gave his conclusions as to the proper boundaries of the grant, based partly at least upon the information obtained from them. After his deposition containing these matters had been filed in the case, and before the hearing in the District Court, two motions were made by the defendant — one to strike out the entire deposition, and the other to suppress parts of it. Both were overruled and no exception taken. The District Court found for the defendant, and entered a decree dismissing the bill. An appeal having been taken to the Supreme Court of the Territory, the entire record was transferred to that court. There, no new motion to strike out this deposition, or any part of it, was presented, nor were the two motions made in the District Court renewed in the Supreme Court, or action asked of that court thereon. The

Supreme Court reversed the decision of the District Court, and set aside the patent. A motion for a rehearing was made, which was denied. *Held*, (1) That no motion to exclude the deposition, or any part of it, having been made in the Supreme Court before decision, and it not appearing in the record that the Supreme Court in giving its decision passed upon the question of its admissibility, there was nothing in that decision to review in that regard; (2) That the action of the court on the motion for a rehearing presented no question for review by this court; (3) That this court could not review the action of the District Court. *Ib.*

3. On the facts it appearing that a fraud was committed in making the survey for the patent, and that the defendant was not a *bona fide* purchaser, it is immaterial that the surveyor was not a party to the fraud. *Ib.*
4. The intent of Congress in each and all of its railroad land grants was that the grant should operate at a fixed time, and should cover only such lands as at that time were public lands, grantable by Congress, and such a grant is not to be taken as a floating authority to appropriate lands within the specified limits which, at a subsequent time might become public land. *United States* v. *Southern Pacific Railroad Co.*, 570.
5. The grant of land made to the Atlantic and Pacific Railroad Company by the act of July 27, 1866, 14 Stat. 292, c. 278, and the grant to the Southern Pacific Railroad Company by the act of March 3, 1871, 16 Stat. 573, c. 122, were grants *in præsenti* which, when maps of definite location were filed and approved, took effect, by relation, as of the dates of the respective statutes. *Ib.*
6. The filing by the Atlantic and Pacific Company of a map of definite location from the Colorado River through San Buenaventura to San Francisco, under a claim of right to construct a road for the entire distance, was good as a map of definite location from the Colorado River to San Buenaventura. *Ib.*
7. The Atlantic and Pacific Railroad Company having duly filed a valid and sufficient map of definite location of its route from the Colorado River to the Pacific Ocean, which was approved by the Secretary of the Interior, the title to the lands in dispute passed thereby to that company under the grant of July 27, 1866, and remained held by it, subject to a condition subsequent, until their forfeiture under the act of July 6, 1886, 24 Stat. 123, c. 637; and by that act of forfeiture the title thereto was retaken by the United States for its own benefit, and not for that of the Southern Pacific Railroad Company, whose grant never attached to the lands, so as to give that company any title, of any kind, to them. *Ib.*
8. The proviso in the act of March 3, 1871, 16 Stat. 573, c. 122, granting lands in aid of the construction of the Southern Pacific Railroad, that the grant should "in no way affect or impair the rights, present or

prospective, of the Atlantic and Pacific Railroad Company," operated to exempt the indemnity lands of the Atlantic and Pacific Company from the grant to the Southern Pacific Company. *United States* v. *Colton Marble & Lime Co.*, 615.

RAILROAD.

See CORPORATION, 3;
COURT AND JURY, 1;
EQUITY, 1, 2, 4, 6;
ESTOPPEL;
JUDGMENT, 1;
PUBLIC LAND, 4;
RIPARIAN OWNER, 1;
TAXATION, 1, 2, 3, 4.

REBELLION.

See CONFISCATION.

RECEIVER.

See NATIONAL BANK, 4, 5.

REMOVAL OF CAUSES.

The petition of a city in a state court, against the lessor and the lessee of a parcel of land, to condemn it for the purpose of extending a street, cannot be removed into the Circuit Court of the United States upon the ground of a separable controversy between the lessee and the plaintiff. *Bellaire* v. *Baltimore & Ohio Railroad Co.*, 117.

See JURISDICTION, B, 13.

RIPARIAN OWNER.

1. The construction of a pier or the extension of any land into navigable waters for a railroad or other purposes, by one not the owner of lands on the shore, does not give the builder of such pier or extension, whether an individual or corporation, any riparian rights. *Illinois Central Railroad Co.* v. *Illinois*, 387.
2. The fee of the made or reclaimed ground between Randolph Street and Park Row, embracing the ground upon which rest the tracks and the breakwater of the railroad company south of Randolph Street, is in the city, and subject to the right of the railroad company to its use of the tracks on ground reclaimed by it and the continuance of the breakwater, the city possesses the right of riparian ownership, and is at full liberty to exercise it. *Ib.*
3. The city of Chicago, as riparian owner of the grounds on its east or lake front of the city, between the north line of Randolph Street and the north line of block twenty-three, each of the lines being produced to Lake Michigan, and in virtue of authority conferred by its charter, has the power to construct and keep in repair on the lake front, east of said premises, within the lines mentioned, public landing places, wharves,

docks and levees, subject, however, in the execution of that power, to the authority of the State to prescribe the lines beyond which piers, docks, wharves and other structures, other than those erected by the general government, may not be extended into the navigable waters of the harbor, and to such supervision and control as the United States may rightfully exercise. *Ib.*

See ILLINOIS CENTRAL RAILROAD, 3, 4, 5, 6.

SEPARABLE CONTROVERSY.

See REMOVAL OF CAUSES.

SET-OFF.

See NATIONAL BANK, 6, 7.

SOUTHERN PACIFIC RAILROAD.

See PUBLIC LAND, 5, 7.

STALE CLAIM.

See LACHES.

STATUTE.

A. CONSTRUCTION OF STATUTES.

See CONSTITUTIONAL LAW, 10, 17; CUSTOMS DUTIES, 8; PENAL LAW, 1, 2, 3.

B. STATUTES OF THE UNITED STATES.

See ALABAMA CLAIMS; CIRCUIT COURTS OF THE UNITED STATES; CONFISCATION, 1; CONSTITUTIONAL LAW, 1, 16; CUSTOMS DUTIES, 1, 3, 5, 6, 7, 12; INTERNAL REVENUE; JURISDICTION, B, 1, 2; C, 1; NATIONAL BANK, 1; PUBLIC LAND, 5, 7, 8; STATUTE, D, 2; WRIT OF PROHIBITION.

C. STATUTES OF STATES AND TERRITORIES.

District of Columbia: *See* CRIMINAL LAW, 1.
Illinois: *See* ILLINOIS CENTRAL RAILROAD, 1, 6.
Massachusetts: *See* ALABAMA CLAIMS.
Michigan: *See* CONSTITUTIONAL LAW, 1, 6.
New Jersey: *See* CONSTITUTIONAL LAW, 12.
New York: *See* CONSTITUTIONAL LAW, 7, 8, 17; STATUTE, D, 1.
North Carolina: *See* TAXATION, 2, 3, 4.
Ohio: *See* CONSTITUTIONAL LAW, 9.
Texas: *See* STATUTE, D, 2.

D. STATUTES OF STATES.

1. The Court of Appeals of the State of New York having held that a judgment obtained before the passage of the act of the legislature of that State of June 20, 1879, reducing the rate of interest, (Sess. Laws 1879, 598, c. 538,) is not a "contract or obligation" excepted from its operation under the provisions of § 1, this court accepts that construction as binding here. *Morley* v. *Lake Shore & Michigan Southern Railway Co.*, 162.
2. A statute of a State, which makes an appearance in behalf of a defendant, although in terms limited to the purpose of objecting to the jurisdiction of the court, a waiver of immunity from jurisdiction by reason of non-residence, is not applicable to actions in a Circuit Court of the United States, held within the State, under Rev. Stat. § 914. *Southern Pacific Co.* v. *Denton*, 202.
3. Public grants susceptible of two constructions must receive the one most favorable to the public. *Hamilton Gas Light & Coke Co.* v. *Hamilton City*, 258.
4. Although a legislative grant to a corporation of special privileges may be a contract, when the language of the statute is so explicit as to require such a construction, yet if one of the conditions of the grant be that the legislature may alter or revoke it, a law altering or revoking the exclusive character of the granted privileges cannot be regarded as one impairing the obligation of the contract. *Ib.*

SUBMERGED GROUND.

See ILLINOIS CENTRAL RAILROAD, 4, 5;
NAVIGABLE WATERS.

SUPREME COURT.

This court does not consider itself bound by expressions touching its jurisdiction found in an opinion in a case in which there was no contest on that point. *Cross* v. *Burke*, 82.

See JURISDICTION, B.

TAXATION.

1. The surrender of the power of taxation by a State cannot be left to inference or conceded in the presence of doubt, and when the language used admits of reasonable contention, the conclusion is inevitable in favor of the reservation of the power. *Wilmington & Weldon Railroad Co.* v. *Alsbrook*, 279.
2. The exemption from taxation conferred upon the Wilmington & Raleigh Railroad Company by the act of January 3, 1834, incorporating it, was

not conferred by that act upon the branch roads which the company was thereby authorized to construct. *Ib.*

3. Exemption from taxation may or may not be a "privilege" within the sense in which that word is used in a statute; and in the act of North Carolina referred to, the word "privileges" does not include such exemption. *Ib.*
4. The portion of the Wilmington and Weldon Railroad which lies between Halifax and Weldon, having been constructed by the Halifax & Weldon Railroad Company, and not under the charter of the Wilmington & Raleigh Railroad Company, is not exempt from state taxation. *Ib.*

See CONSTITUTIONAL LAW, 11.

VESSEL.

See ADMIRALTY;
WRIT OF PROHIBITION.

WITNESS.

See EVIDENCE, 13.

WRIT OF PROHIBITION.

On the authority of *In re Fassett;* 142 U. S. 479, the court refuses to grant a writ of prohibition to restrain the District Court of the United States for the Eastern District of New York from taking jurisdiction of a petition of the owner of a barge for the benefit of the limited liability act, Rev. Stat. §§ 4283 to 4285, and from further proceedings thereunder. *In re Engles,* 357.

See CONSTITUTIONAL LAW, 15;
JURISDICTION, B, 16.